In *Blackburn* v. *Crawfords,* 3 Wall. 175, the lower court had instructed that "if the jury find that at any time Mr. Crawford and Elizabeth Taylor lived together as husband and wife; that he acknowledged that she was his wife, and always treated her as such; and recognized the children which she bore during that time as his children, and permitted them to be called by his name, then the presumption of law is in favor of legitimacy of said children." The Supreme Court of the United States in reviewing the instruction said: "Under such circumstances the law makes no presumption," and in *Arnold* v. *Chesebrough,* 46 Fed. 700 and *Osborne* v. *McDonald,* 159 Fed. 791 it was held that proof that the father and mother cohabited together raised no presumption that their children were legitimate, but that it was necessary for the complainant to go ahead and prove the marriage of the ancestors by a preponderance of evidence. However, the state courts which have passed upon the question adhere to the rule that when the parentage of a child is shown along with cohabitation of the parents, then the presumption is that the offspring is legitimate. *In re Kennedy,* 143 N. Y. Supp. 404; *Dunn* v. *Garnet,* 129 Ky. 728, 112 S. W. 841; *Locust* v. *Caruthers,* 23 Okla. 373, 100 Pac. 520; *Vaughan* v. *Rhodes,* 2 McCord, 227, 13 Am. Dec. 713; *Skidmore* v. *Harris,* 157 Ky. 756, 164 S. W. 98; *In re Matthew's Estate,* 37 N. Y. Supp. 308.

BILLS AND NOTES—PAYMENT OF FORGED INSTRUMENT.—A check on which both the signatures of drawer and endorser were forged, was drawn upon the plaintiff bank. In the course of business it was sent through the defendant bank—which cashed it—to the plaintiff with the endorsement "all prior endorsements guaranteed." It was the custom for the drawee banks to take such checks in reliance upon the due diligence supposed to be exercised by the first bank in verifying signatures. The plaintiff, in reliance upon such custom, cashed the check, and upon discovery of the forgeries seeks to recover the money paid to the first bank. *Held,* the plaintiff cannot recover. *State Bank* v. *Cumberland Savings & Trust Co.* (N. C. 1915), 85 S. E. 5.

The decision is based upon the doctrine of estoppel that permits no recovery by the drawee of a payment made on a forged instrument. But as there is a contrary doctrine—considered more equitable—permitting a recovery when the person from whom it is allowed is placed in no worse a position than he would have been if payment in the first place had been refused—see 10 MICH. L. REV. 226, and 9 MICH. L. REV. 63—that fact combined with the custom concerned in the instant case, and the endorsement guaranteeing all prior endorsements, would seem to be grounds for concluding that a different decision would have been more satisfactory in a case of first impression. As to a custom, it has been held that a drawee bank is entitled, by virtue of a general custom among banks, to rely upon the presumption that the cashing bank in taking the instrument directly from a stranger exercised due caution in examining the stranger's right to the note, and can recover the money paid by it to the cashing bank when the check was forged, and the cashing bank had neglected to use the caution required by the cus-

tom. *Ellis* v. *Ohio Life Ins. & T. Co.*, 4 Oh. St. 628. The recognition of a custom under the circumstances of the instant case would seem warranted by analogy. And as to the endorsement, while one line of authority looks upon it as no guarantee to the drawee, but only to subsequent endorsers, another line is to the contrary, and considers it as affecting the drawee. *Ford* v. *People's Bank of Orangeburg*, 74 S. C. 180. A rule following the equities would seem to be the better.

BILLS AND NOTES—WHAT IS EVIDENCE OF DELIVERY UNDER PLEA OF NON EST FACTUM?—In an action against a decedent's estate on a promissory note, the administrator interposed a plea of non est factum, thus throwing upon the plaintiff the burden of proving the execution of the note. After proof of the signing of the note, it was offered in evidence. After the plaintiff rested his case, the defendant requested a directed verdict on the ground that the plaintiff had not made out a prima facie case. The plaintiff's motion was refused. On error, the question was what proof is necessary to make a prima facie case of delivery. *Held,* proof of signing, coupled with possession of the instrument, is sufficient. *Deeter* v. *Burk* (Indiana, 1915), 107 N. E. 304.

As execution is composed of the two elements of signing and delivering, and the plea of non est factum compels the plaintiff to prove execution, the proof of both signing and delivery is necessary. Some decisions, even in the state of the instant case, are to the effect that proof of signing, though coupled with actual possession, is not sufficient evidence of delivery. *Digan* v. *Mandel*, 167 Ind. 586; *Purviance* v. *Jones*, 120 Ind. 162; *Sears* v. *Daly*, 43 Ore. 346. The instant case adopts a contrary view which is also supported by certain Indiana decisions, *Brooks* v. *Allen*, 62 Ind. 401; *Taylor* v. *Gay*, 6 Blackf. 150. The theory in support of the doctrine of the instant case is that with the signing proved, and possession had, the inference must then be either that the maker did deliver the instrument, or that the holder came into possession of it wrongfully; that the presumption must be in favor of right conduct, and therefore that situation warrants the finding of delivery. This rule it was considered tended to promote the facility of commercial intercourse through the medium of negotiable instruments.

CONSTITUTIONAL LAW—ANTI-ALIEN LABOR STATUTE.—A statute of Arizona (enacted under the initiative provision of the constitution of that state) required employers of more than five laborers to include in that number at least eighty per cent of qualified electors or native-born citizens of the United States; *held,* such a statute is unconstitutional as denying aliens the equal protection of the laws. *Truax, et al.* v. *Raich* (1915), 36 Sup. Ct. 7.

The question was raised upon a bill in equity by an employee who had been threatened with discharge from employment because of the employer's fear of the penalties of the statute. The employment of the complainant was at the will of the parties; and the bill was filed before any proceedings had been begun against the employer for the violation of the statute. The employer, county attorney and attorney general were made defendants. The